

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBERT A. CROW,

Petitioner,

v.

ALICE PAYNE,

Respondent.

Case No. C04-5775FDB

ORDER DENYING CERTIFICATE
OF APPEAL

Petitioner objected to the Magistrate Judge's Report and Recommendation that this cause of action be dismissed for his failure to comply with the Court's order to file an amended petition. The Docket reflects the timing of the entries in this case, a change of address, and that Petitioner did not receive notice referenced in the Magistrate Judge's R&R. This Court, by Order of April 21, 2005, gave Petitioner additional time to file an amended petition no longer than 24 pages and warned that failure to comply would result in dismissal of this cause of action.

Rather than take advantage of the additional time to file an amended complaint, Petitioner filed a notice of appeal. Under these circumstances, an appeal would present no fairly debatable question of constitutional magnitude and a certificate of appealability is denied.

NOW, THEREFORE, IT IS ORDERED: Certificate of Appealability is DENIED.

DATED this 29th day of June, 2005.



FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE